

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. Appl. No.: 10/653,926

Attorney Docket No.: Q77274

**AMENDMENTS TO THE DRAWINGS**

**Please replace FIG. 14 with the following replacement sheet.**

**Attachment: 1 replacement sheet**

**REMARKS**

**Status of the Application**

Applicant thanks the Examiner for withdrawing the previous grounds of rejection.

Claims 1-8, 18, and 26-40 are all the claims pending in the Application.

Claims 33, 34, and 36 are objected to due to alleged informalities.

Claims 39, 32, 26, and 27 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over See (U.S. 2004/003094) in view of Kikinis (U.S. 6,078,566). (The first paragraph on page 3 of the Office Action states that claims 9-11, 14, 16, 21, 24, and 25 are rejected, but as all these claims are canceled, Applicant presumes this is in error, and addresses only the rejections made in the body of the rejection on pages 3-4).

Claims 1 and 40 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over See in view of Kikinis and further in view of Applicant's Admitted Prior Art (AAPA).

Claim 2 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over See, Kikinis, and AAPA, further in view of Examiner's Official Notice.

Claim 18 is allowed and claims 3-8, 28-31, and 33-38 are allowable if rewritten into independent form.

**Objections to the Claims**

Claims 33 is objected to due to its improper dependency. Applicant amends claims 33-38 to correct errors, and therefore respectfully requests the Examiner to withdraw the objection.

Claims 34 and 36 are objected to due to alleged deficiency of prepositional phrases. These claims are amended for precision of language and to explicitly recite therein what was believed to have already been implicitly defined. Applicant respectfully requests the Examiner to withdraw this objection.

**Amended Drawing**

Applicant has amended a typographical error in figure 14.

**Claim Rejections - 35 U.S.C. § 103**

**See and Kikinis**

Claims 39, 32, 26, and 27 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over See (U.S. 2004/003094) in view of Kikinis (U.S. 6,078,566). Applicant respectfully traverses this rejection.

Claim 39 recites “sorting received packets into prioritized packets and packets other than the prioritized packets; accumulating the sorted prioritized packets; capsulating more than one of the accumulated packets into one capsulated packet; and transmitting said capsulated packet.” The Examiner alleges that each of these features, except for sorting, is disclosed by See. However, See does not disclose or suggest “capsulating more than one of the accumulated packets into one capsulated packet”. The Examiner points to paragraphs 13 and 29 as allegedly

disclosing this feature. However, these paragraphs relate to encapsulating a packet with a different header to facilitate network transmission. Paragraph 13 discloses that “the invention in the some embodiments features ... duplicating the ingress packet, ... *encapsulating the duplicate packet* with a mirrored flow header; and transmitting, using information in the mirrored flow header, the duplicate packet from a first network node, e.g. a source network device, to a second network node, e.g. a target network device.” Thus a single packet is transmitted, encapsulated with a mirrored flow header. This is further evident from paragraph 41:

Encapsulation refers to the process by which new addressing and or labeling information is added onto *an existing, intact packet* for purposes of transmitting *the packet* from the source network device to the target network device. In the preferred embodiment, a new mirrored flow encapsulation (MFE) header is appended to front of *the duplicate packet* preceding any existing network headers such as an Ethernet header and an IP header present in *the unmodified packet*. In some embodiments, a new footer including a MFE frame check sequence (FCS) is also appended to the end of *the duplicate packet*. (emphasis added)

It is clear that See is disclosing packet-by-packet encapsulation to direct the flow of the encapsulated packets on the network. Contrary to the Examiner’s assertion, See fails to disclose or suggest encapsulating more than one packet together. Rather, See clearly discloses that each individual packet is encapsulated. Kikinis does not remedy this deficiency. The Examiner looks to Kikinis only for allegedly disclosing the sorting of packets, and in fact Kikinis does not teach or suggest “capsulating more than one of the accumulated packets into one capsulated packet”, as recited in claim 39.

Furthermore, Kikinis does not teach or suggest “sorting received packets into prioritized packets and packets other than the prioritized packets”, as the Examiner suggests. The cited passage of Kikinis discloses:

Referring now to FIG. 3A, as a user speaks into a microphone during a call. DSP 101a with speech recognition capability monitors input, sorts out speech from non-speech, and creates data packets for voice only and *will not create packets* during pauses when the user is not speaking. In this way, bandwidth is made available for other functions because *data packets containing background noise and the like are never created*. Data-data packets containing non-voice data such as file-transfer data and the like are created in normal fashion and sent along with DNT packets if the user is, of course, transferring a file and talking on the unit at the same time. This technique in this embodiment assumes that there is sufficient bandwidth for multi-task functions while actively engaged in a DNT call. (emphasis added)

Thus the sorting of speech from non-speech, which the Examiner asserts corresponds to the sorting recited in claim 39, happens before packets are created. Contrary to the Examiner’s interpretation, “prioritized packets” cannot be sorted from “other than the prioritized packets” under the Examiner’s interpretation of Kikinis. Kikinis therefore fails to teach or suggest this feature of claim 39.

Claim 39 is patentable over the cited references for at least these reasons.

Claims 32, 26 and 27 recite similar features and thus are patentable for similar reasons.

See, Kikinis, and AAPA

Claim 1 and 40 are rejected under 35 U.S.C. § 103(a) as being unpatentable over See in view of Kikinis and AAPA. Applicant submits that AAPA does not remedy the deficiencies of

See and Kikinis noted above with respect to claim 39. Because claims 1 and 40 recite features similar to those analyzed above for claim 39, and therefore claims 1 and 40 are patentable over the cited references for reasons analogous to those discussed above with respect to claim 39.

See, Kikinis, AAPA, and Official Notice

Claim 2 is rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the references applied to claim 1 above and further in view of Examiner's Official Notice. Applicant respectfully traverses this rejection. Claim 2 depends from claim 1. As explained above, claim 1 is patentable over the cited references. The Examiner's Official Notice relates to the arbitrating means recited in claim 2, and does not remedy the deficiencies noted above. Therefore, Claim 2 is patentable over the cited references at least due to its dependence from claim 1.

Further, Applicant does not acquiesce to the Examiner's Official Notice, and requests evidence that the relevant feature was known in the art at the time of the invention.

Allowable Subject Matter

Applicant thanks the Examiner for noting that claim 18 is allowed and that claims 3-8, 28-31, and 33-38 are allowable if rewritten into independent form. Applicant elects to hold the rewriting of these claims in independent form in abeyance for the present.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

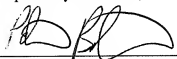
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Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned attorney at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880 via EFS payment screen. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



Peter W. Bradford  
Registration No. 59,080

SUGHRUE MION, PLLC  
Telephone: (202) 293-7060  
Facsimile: (202) 293-7860

WASHINGTON OFFICE

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